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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,580	06/05/2001	Richard A. Brauckman	TGXX-1003US	6921

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,580

Applicant(s)

BRAUCKMAN ET AL. 

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 11, 2003 has been entered.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The mechanical attachment of adhesives and suturing (defined in claim 22) should be described in the specification.

Claims 26 and 28-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 26, line 10, it is unclear if "an insertion device" is the same as the insertion device defined in line 4.

Claims 1-26 and 28-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Tam et al. (6,261,320) for the reasons set forth in paragraph 1 of the Office Action mailed March 6, 2003. In

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addition, as to the term "separate" in claims 1 and 10, one of the definitions of "separate" in Webster's II New Riverside University Dictionary is "Not alike: Dissimilar". One of the definitions of "separate" in dictionary.com is "Dissimilar from all others; distinct". The Tam et al. radioactive "coating" 312 is certainly dissimilar from the other layers since it is formed of a dissimilar material. Further, it is certainly distinct from the other layers for this same reason. As to claim 26, Tam et al. disclose a insertion device which is an expandable catheter (the balloon catheter described from col. 10, line 64 to col. 11, line 4) which is clearly separate from the substrate.

Claims 1-26 and 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tam et al. (6,261,320) in view of Park et al. (6,152,869). Assuming *arguendo* that the Tam et al. radioactive "coating" 312 not considered to be a "separate" sheet since it directly coated onto the stent, Park et al. teach that a radioactive sleeve 7 which is associated with a stent may be first formed of as a separate member (figure 2) which is later attached to the stent (col. 5, lines 47-57) as an alternative to coating the stent (col. 3, lines 43-48). This arrangement has the self-evident advantage of providing a more versatile combination of parts. It would have been obvious to make the Tam et al. radioactive portion

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312 a separate member which is later attached to the stent so that it too would have this advantage. Although the Park et al. sleeve 7 is ultimately attached to the stent, it is still considered to be "separate", noting that the sheet of applicant's invention is considered to be "separate" even though it is attached to the stent as indicated in claims 21 and 22 and page 7, lines 16-19 of the specification. In any event, the Park et al. sleeve 7, prior to being attached to the stent as shown in figure 2, is clearly separate. When incorporating this teaching into the Tam et al. device, the sheet would be separate prior to being attached to the stent and would meet the terms of the claims prior to this attachment.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's arguments filed August 11, 2003 have been fully considered but they are not persuasive for the reasons set forth above.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications and (703)872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
December 2, 2003



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731